

## REMARKS

This Paper is submitted in response to the Office Action mailed November 3, 2006 having a shortened statutory response period ending on February 3, 2007. This Paper is filed within the shortened statutory response period. The Commissioner is hereby authorized to charge any additional fees to Deposit Account number 02-1818. If such a withdrawal is made, please reference docket number 112713-989.

Claims 3-7, 9, 11-18, 20, 22-23, 25, 28, 39-45, and 61-62 are pending in this application. Claims 1-2, 8, 10, 19, 21, 24, 26-27, 29-38, 46-60, and 63-67 have been canceled.

Claims 3-7, 9-18, 20, 22-23, 25-26, 28, 39-45, and 61-62 were rejected under 35 U.S.C. §112 1<sup>st</sup> paragraph as the term "a single tie layer" was alleged to be not supported by the specification. Applicants respectfully disagree with and traverse this rejection. The patent law is clear that the drawings alone are sufficient to fulfill the written description requirement of 35 U.S.C. §112. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555 (Fed. Cir. 1991). In the present case, Figure 1 clearly illustrates a multiple layer film having a first outer layer 12, a solution contact layer 16, and a single tie layer 14.

Moreover, it is an axiom of patent law that a patent application need not describe the claimed subject matter in exactly the same terms as used in the claims. *In re Wertheim*, 191 USPQ 90, 96 (CCPA 1976). The test for determining compliance with the description requirement is whether the application reasonably conveys to the skilled artisan that the inventor had possession of the claimed subject matter at the time of the filing date. *Eiselstein v. Frank*, 34 USPQ2d 1467, 1470 (Fed. Cir. 1995). The skilled artisan would readily recognize that Figure 1 and the present specification disclose a multiple layer film with a single tie layer disposed between and in direct contact with only the first and second exterior layers. In view of the foregoing, Applicants respectfully submit that the present claims are fully supported by the present specification and that the alleged §112 rejection be withdrawn.

Claims 4-7, 9-18, 20, 22-23, 25-26, 28, 39-45, and 61 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,361,843 to *Smith* et al. (*Smith*). Claims 4-7, 9-10, 14-18, 20, 22-23, 25-26, 28, 39-41, and 61 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,610,392 to *Ramesh* et al. (*Ramesh*). Claims 11-13 and 42-45 were rejected under 35 U.S.C. §103(a) as being obvious over *Ramesh* in view of U.S. Patent No. 4,487,885 to *Adur* et al. (*Adur*). Claims 3 and 62 were rejected under 35 U.S.C. §103(a) as being

obvious over *Smith* in view of U.S. Patent No. 5,695,840 to Mueller (*Mueller*). Claims 3 and 62 were rejected under 35 U.S.C. §103(a) as being obvious over *Ramesh* in view of *Mueller*. Applicants respectfully traverse and disagree with these rejections.

Applicants respectfully submit that the alleged prior art rejections are based on a misinterpretation of the claim terms 1) “a single tie layer,” and 2) “in direct contact with only....” In particular, Applicants submit that the Examiner’s interpretation of “a single tie layer” which is located between first and second exterior layers and is in “direct contact with only” the first and second exterior layers contradicts the patent law as set forth in detail below.

It is a well-settled canon of claim construction that claim terms are to be given their ordinary and customary meaning. *Hockerson-Halberstadt, Inc., v. Avia Group Int’l Inc.*, 222 F.3d 951, 955 (Fed. Cir. 2000). Consequently, the ordinary and customary meaning of the claim term “a single tie layer” is “one” tie layer or a tie layer “consisting of one part.” In other words, “a single tie layer” does not include additional layers or sublayers.

The Examiner states that “any intermediate layers could be considered together as one tie layer.” Office Action dated November 3, 2006 at p. 5 (emphasis added). This interpretation of the term “single tie layer” contradicts the ordinary and customary meaning of the term “single” and is based on an improper standard for anticipation. The assertion that a “single” layer could be “any intermediate layers” simply contradicts the ordinary and customary meaning of the term “single.” The ordinary and customary meaning of the term “single” is “one” or “consisting of one part” as set forth above. The term “single” does not mean a plurality of intermediate layers. The assertion that “a single tie layer” includes a plurality of intermediate layers is an unduly broad interpretation that ignores the ordinary and customary meaning of the term “single.”

Secondly, the Examiner’s assertion that “any intermediate layers could be considered together as one tie layer” is not the proper standard for anticipation. The patent law is clear that the mere probability that a certain thing may result from a given set of circumstances is insufficient to establish anticipation. *In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999). The Examiner’s position that a plurality of intermediate layers may be a single tie layer is purely speculative and is therefore insufficient to support the alleged anticipation rejection.

Applicants further respectfully submit that the Examiner’s interpretation of the claim term “the tie layer in direct contact with only the first exterior layer and the second exterior layer” ignores the claim construction canon that claim terms are to be given their ordinary and

customary meaning. The skilled artisan would recognize that the ordinary and customary meaning of the tie layer “in direct contact with only” the first and second exterior layers means that the tie layer exclusively touches the first and second exterior layers without any intervening layers between the tie layer and the exterior layers.

The Examiner asserts that *Smith*’s disclosure of a multiple layer film with an outer layer attached to an inner layer by way of three intermediate layers (*i.e.*, tie-core-tie layers) discloses an outer layer in “direct contact” with an inner layer. Office Action dated November 3, 2006 at p. 4. This interpretation of the claims contradicts that ordinary and customary meaning of the term “in direct contact with only” as recited in the present claims. *Smith* clearly discloses two tie layers (as opposed to the claimed single tie layer) with an intervening layer (the core layer) located between the tie layers. *Smith*, col. 1 lines 53-57, Figure 1. When the claim terms are given their ordinary and customary meaning, it is clear that *Smith* fails to disclose or suggest “a single tie layer in direct contact with only the first exterior layer and the second exterior layer” as recited in the present claims.

Indeed, *Ramesh* supports the ordinary and customary meaning of the term “in direct contact with” as contact between two layers without any intervening layers as set forth by the Applicants. *Ramesh* states that “the phrase ‘directly adhered’, as applied to layers, is defined as adhesion of the subject layer to the object layer, without a tie layer, adhesive, or other layer therebetween.” *Ramesh*, col. 14 lines 10-25 (emphasis added). Thus, the skilled artisan would understand that the claim term “in direct contact with only” means that the tie layer contacts the first and second exterior layers without any intervening layers between the tie layer and the exterior layers.

When the claim terms are given their ordinary and accustomed meaning, it is clear that no combination of *Smith*, *Ramesh*, *Adur* and/or *Mueller* discloses or suggests a multiple layer structure having a first exterior layer composed solely of a PCCE or a polyamide, a second exterior composed solely of an ethylene  $\alpha$ -olefin copolymer, and a single tie layer disposed between and directly contacting only the first and second exterior layers as recited in the present claims. *Smith* teaches away from a multiple layer structure having a single tie layer disposed between first and second exterior layers, the tie layer in direct contact with only the first and second exterior layers. *Smith* discloses a polymeric structure having at least five layers: an exterior solution contact layer (II), a core layer (I), an exterior outer layer (III), and two tie

layers (IV), namely, a tie layer between layers II and I, and a tie layer between layers I and III. *Smith*, col. 2 line 65 through col. 3 line 17, FIG. 1. *Smith's* core layer I lies between the exterior solution contact layer (II) and the exterior outer layer (III) thereby preventing a single tie layer from contacting both exterior layers. *Smith* further requires two tie layers—a tie layer between layers II and I, and a tie layer between layers I and III further teaching away from a single tie layer. As *Smith* discloses 1) a multilayered structure with a core layer that prevents direct contact between a single tie layer and only the two exterior layers, and 2) *Smith* explicitly discloses a multiple layer structure with a core layer sandwiched between two tie layers, *Smith* teaches away from a multiple layer structure having a single tie layer disposed between the first and second exterior layers, the single tie layer in direct contact with only the first and second exterior layers as recited in the present claims.

*Ramesh* likewise teaches away from a multiple layer structure having a single tie layer disposed between first and second exterior layers, the tie layer in direct contact with only the first and second exterior layers as recited in the present claims. *Ramesh* discloses a multilayer film having at least four layers: exterior layer A, inner layer B, inner layer C, and exterior layer D. *Ramesh*, col. 2 lines 38-49, col. 15 lines 28-29, *see also* col. 21 lines 17-25. As the *Ramesh* multiple layer film requires at least two inner layers between exterior layers A and D, *Ramesh* teaches away from a single tie layer disposed between the exterior layers and in direct contact with each exterior layer as recited in the present claims.

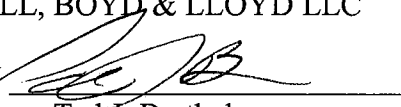
Even if *Adur* and *Mueller* were combinable with *Smith* and/or *Ramesh* (which they are not as *Smith* and *Ramesh* each teach away from the present claims), *Adur* and *Mueller* each fail to fulfill the deficiencies of *Smith* and/or *Ramesh*. *Adur* merely discloses adhesive blends and fails to teach or suggest a film having an exterior layer composed of an ethylene and  $\alpha$ -olefin copolymer having a density of less than about 0.905 g/cc as recited in the claims. Indeed, *Mueller* further teaches away from the present claims as *Mueller* discloses a five-layered film with an inner core layer disposed between the exterior layers, the inner core layer preventing direct contact between two exterior layers and a single tie layer disposed therebetween as recited in the present claims. *Mueller*, col. 6 lines 4-9, FIG. 1.

In view of the foregoing, Applicants respectfully submit that claims 3-7, 9, 11-18, 20, 22-23, 25, 28, 39-45, and 61-62 are in a condition for allowance and respectfully request an early notice of the same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY

A handwritten signature in black ink, appearing to read 'Ted J. Barthel', is written over a horizontal line.

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